

Original

BILL NO. S-83- 11-02

SPECIAL ORDINANCE NO. S- 23383

AN ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF FORT WAYNE, INDIANA ECONOMIC DEVELOPMENT REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF \$9,000,000, FOR THE PURPOSE OF FINANCING THE COST OF THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF CERTAIN ECONOMIC DEVELOPMENT FACILITIES FOR THE BENEFIT OF AVERY INTERNATIONAL CORPORATION; AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND TRUST INDENTURE RELATING THERETO; APPROVING THE FORM OF A PROMISSORY NOTE, A LETTER OF CREDIT AGREEMENT AND A PLACEMENT MEMORANDUM IN CONNECTION THEREWITH; AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN OTHER DOCUMENTS RELATING TO THE FOREGOING; AND FOR OTHER RELATED PURPOSES:

**WHEREAS**, the City of Fort Wayne, Indiana (the "City"), is a municipal corporation and a political subdivision organized and existing under the laws of the State of Indiana, and is authorized and empowered under and by virtue of Indiana Code, Section 36-7-12-1, et seq., as amended (the "Act"), to issue its economic development revenue bonds for the purpose of acquiring and installing "economic development facilities" (as defined in the Act) and to enter into financing agreements with respect thereto in order to improve and promote employment opportunities and the general economic welfare of the City; and

**WHEREAS**, the Common Council of the City (the "Governing Body") has heretofore created the Fort Wayne Economic Development Commission (the "Commission") pursuant to the Act, and the members of the Commission have been duly appointed and qualified pursuant to the Act; and

**WHEREAS**, by resolutions duly adopted on September 29, 1983, and October 25, 1983, the Commission and the City, respectively, took affirmative official action (the "Inducement Resolution") providing for the acquisition, construction and installation of certain economic development facilities located in the City by Avery International Corporation, a Delaware Corporation qualified to do business in the State of Indiana (the "Company"), consisting of certain buildings, machinery, equipment and related property (the "Project"), and the financing of the Project through the issuance of economic development revenue bonds by the City; and

**WHEREAS**, the Commission, in compliance with Section 103(k) of the Internal Revenue Code of 1954, as amended (the "Code"), conducted a public hearing with respect to the financing of the proposed Project on December 1, 1983, and the City approved the proposed Project on December 13, 1983; and

**WHEREAS**, the City proposes to enter into a Loan Agreement, to be dated as of December 1, 1983 (the "Agreement"), between the City and the Company, pursuant to the terms of which the City agrees to finance the cost of the acquisition, construction and installation of the Project; and

**WHEREAS**, the City proposes to enter into a Trust Indenture, to be dated as of December 1, 1983 (the "Indenture"), between the City and American Fletcher National Bank and Trust Company, a national banking association having its principal corporate trust office in the City of Indianapolis, Indiana, as trustee (the "Trustee"), pursuant to which the City will issue and deliver its City of Fort Wayne, Indiana Economic Development Revenue Bonds (Avery International Corporation Project), Series 1983, in the aggregate principal amount of \$9,000,000 (the "Bonds"), for the purpose of financing the cost of the acquisition, construction and installation of the Project; and

**WHEREAS**, the City has determined that the most feasible means of financing the Project is through the issuance of the Bonds; and

**WHEREAS**, in order to evidence its obligation to pay to the City amounts sufficient to pay the principal and purchase price of, and the redemption premium (if any) and interest on, the Bonds as the same become due and payable, the Company will issue and deliver to the City its Promissory Note, to be dated the date of delivery of the Bonds (the "Note"), in substantially the form attached as Exhibit "A" to the Agreement; and



**WHEREAS**, Bankers Trust Company, New York, a banking corporation organized under the laws of the State of New York (the "Bank"), will issue an irrevocable Letter of Credit, to be dated the date of delivery of the Bonds (the "Letter of Credit"), in favor of the Trustee, for the account of the Company, obligating the Bank to pay to the Trustee for the period described therein upon request and in accordance with the terms thereof, up to (i) an amount equal to the aggregate principal amount of the Bonds then outstanding (A) to pay the principal of the Bonds, whether at maturity, upon redemption or otherwise, and (B) to enable the Trustee to pay the purchase price of any Bonds required to be purchased by the Trustee under the terms of the Indenture, plus (ii) an amount equal to one hundred and twenty (120) days accrued and unpaid interest at the maximum rate which may be borne by the Bonds on all outstanding Bonds (other than Bonds held by the Bank as a result of a drawing under the Letter of Credit); and

**WHEREAS**, the Bank and the Company will enter into a Letter of Credit Agreement, to be dated as of December 1, 1983 (the "Letter of Credit Agreement"), under the terms of which the Company will agree to reimburse the Bank for all amounts drawn by the Trustee under the Letter of Credit, together with interest on all such amounts, and to pay to the Bank a commission for issuing the Letter of Credit; and

**WHEREAS**, in order to provide for the offering of the Bonds, the Bank, as Placement Agent under the Indenture, has prepared a Placement Memorandum (the "Placement Memorandum"), to be dated the date of delivery of the Bonds, and it is necessary that the City approve the use and distribution of the Placement Memorandum; and

**WHEREAS**, it appears to be in the best interest of the citizens of the City that the Agreement and the Indenture be entered into, and the Governing Body has found and does hereby declare that the issuance of the Bonds by the City to finance the cost of the acquisition, construction and installation of the Project is a lawful and valid public purpose and that it will improve and promote employment opportunities and industry in the City and promote the general economic welfare of the City; and

**WHEREAS**, the Commission has prepared a report estimating the public services which will be made necessary and desirable by the Project and the expense of such service, the total cost of the Project, the number of jobs to be created or saved by the Project and the estimated payroll of the Project, and the Commission submitted such report to the Director of the Plan Commission and allowed five (5) days after receipt of such report for the Director of such Plan Commission to formulate written comments concerning such report and submit said comments back to the Commission; and

**WHEREAS**, the Commission has found that there are no existing facilities in the City which are suitable for the Company's purpose and that the proposed Project will not have an adverse competitive effect on similar facilities already constructed or operating in the City; and

**WHEREAS**, the Commission then held a public hearing on the Project on December 1, 1983, after giving notice in accordance with the Act, and upon finding that the Project will be of benefit to the welfare of the City and that the Project complies with the purposes and provisions of the Act, the Commission adopted a resolution approving the form and terms of the Bonds and the forms of the Agreement, the Indenture, the Note, the Letter of Credit Agreement and the Placement Memorandum. The Resolution and the forms of the Agreement, the Indenture, the Note, the Letter of Credit Agreement and the Placement Memorandum, along with the report of the Commission and the written comments, if any, of the Director of the Plan Commission concerning such report, and all other instruments and information pertaining to the Project were then transmitted to the Governing Body by the Secretary of the Commission; and

**WHEREAS**, it appears that each of the documents above referred to which are now before the Governing Body are in appropriate forms and are appropriate documents to be executed, delivered and/or approved by the City for the respective purposes intended;

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:**



**Section 1. Authority for Bond Ordinance.** This Bond Ordinance is adopted pursuant to the provisions of the Act.

**Section 2. Findings.**

(a) The Governing Body has found and does hereby declare that the issuance and sale of the Bonds and the use of the proceeds from the sale of the Bonds to finance the acquisition, construction and installation of the Project complies with the purposes and provisions of Section 36-7-12-25 of the Act and will be of benefit to the City and its citizens.

(b) The Governing Body has found and does hereby declare that there are no existing facilities in the City which are suitable for the Company's purpose and that the proposed Project will not have an adverse competitive effect on similar facilities already constructed or operating in the City.

**Section 3. Authorization of the Financing of the Acquisition, Construction and Installation of Project.** The financing of the acquisition, construction and installation of the Project as contemplated in the Agreement is hereby authorized.

**Section 4. Authorization of Bonds.** For the purpose of financing the acquisition, construction and installation of the Project, the issuance of revenue bonds of the City known as "City of Fort Wayne, Indiana Economic Development Revenue Bonds (Avery International Corporation Project), Series 1983", in the aggregate principal amount of \$9,000,000, is hereby authorized. The Bonds shall be dated, mature, bear interest, be subject to payment and redemption prior to maturity and be payable as set forth in Articles II, III and IV of the Indenture. The Bonds shall be issued as registered Bonds without coupons in various denominations with such rights of exchangeability and transfer and shall be in the form and executed and authenticated in the manner provided in the Indenture. The term "Bonds" as used herein shall be deemed to mean and include the Bonds as initially issued and delivered and Bonds issued in exchange therefor or in exchange for Bonds previously issued. Any Bonds hereafter issued in exchange for the Bonds initially issued and delivered pursuant to the Indenture shall be executed in accordance with the provisions of the Indenture and such execution by the Mayor and Clerk of the City, whether present or future, is hereby authorized.

**Section 5. Authorization of Agreement.** The execution and delivery of the Agreement by and between the City and the Company be and the same are hereby authorized. The Agreement shall be in substantially the form attached hereto as Exhibit "A", subject to such minor changes, insertions or omissions as may be approved by the Mayor of the City and the execution of the Agreement by the Mayor of the City as hereby authorized shall be conclusive evidence of any such approval. Delivery of the Agreement shall be conditioned upon the execution and delivery of the Company of the Note in substantially the form attached as Exhibit "A" to the Agreement which form is hereby approved.

**Section 6. Authorization of Indenture.** In order to secure the payment of the principal and purchase price of, redemption premium (if any) and interest on the Bonds herein authorized, and in order to secure the performance and observance of all of the agreements and conditions in the Bonds, the execution and delivery of the Indenture by and between the City and the Trustee be and the same are hereby authorized. The Indenture shall be in substantially the form attached hereto as Exhibit "B", subject to such minor changes, insertions or omissions and may be approved by the Mayor of the City and the execution of the Indenture by the Mayor and the Clerk of the City shall be conclusive evidence of any such approval.

**Section 7. Approval of Letter of Credit Agreement.** The Letter of Credit Agreement shall be in substantially the form attached hereto as Exhibit "C", subject to such minor changes, insertions or omissions as may be approved by the Company and the Bank prior to the execution and delivery thereof.

**Section 8. Approval of Placement Memorandum.** The use and distribution of the Placement Memorandum with respect to the Bonds is hereby authorized. The Placement Memorandum shall be in substantially the form attached hereto as Exhibit "D", subject to such minor changes, insertions or omissions as may be approved by the Bank prior to the delivery of the Bonds to the initial purchasers thereof.



**Section 9. Designation of Trustee.** American Fletcher National Bank and Trust Company, Indianapolis, Indiana, is hereby designated Trustee under the Indenture and as Paying Agent and Bond Registrar for the Bonds.

**Section 10. Non-Arbitrage Certification.** The Mayor of the City is hereby authorized to execute in the name and on the behalf of the City a Non-Arbitrage Certificate required to be executed pursuant to the provisions of Section 103 of the Code, and the applicable Income Tax Regulations thereunder.

**Section 11. Election Pursuant to Section 103(b)(6)(D) of the Code.** The Mayor of the City is hereby authorized to file a notice of election to issue the Bonds pursuant to Section 103(b)(6)(D) of the Code and to sign and file or cause to be filed any and all documents necessary to accomplish and perfect such election.

**Section 12. Information Reporting Pursuant to Section 103(l) of the Code.** The Mayor of the City is hereby authorized to sign and file or cause to be filed a completed IRS Form 8038 relating to Private Activity Bond Issues as required by Section 103(l) of the Code.

**Section 13. Ratification and Confirmation of Inducement Resolution.** The adoption of the Inducement Resolution with respect to the Issuer's agreement in principle to provide financing for the Project is hereby ratified and confirmed.

**Section 14. No Personal Liability.** No stipulation, obligation or agreement herein contained or contained in the Agreement or the Indenture shall be deemed to be a stipulation, obligation or agreement of any officer, member, agent or employee of the City in his individual capacity, and no such officer, member, agent or employee shall be personally liable on the Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

**Section 15. General Authority.** From and after the execution and delivery of the documents hereinabove authorized, the proper officers, members, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed and are further authorized to take any and all further actions and execute and deliver any and all other documents and certificates as may be necessary or desirable in connection with the issuance of the Bonds and the execution and delivery of the Indenture and the Agreement and to document compliance with the provisions of Section 103 of the Code.

The Mayor and the Clerk of the City are hereby authorized and directed to prepare and furnish to the purchaser or purchasers, when the Bonds are issued, certified copies of all the proceedings and records of the City relating to the Bonds, and such other affidavits and certificates as may be required to show the facts relating to the legality and marketability of the Bonds as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the truth of all statements contained therein.

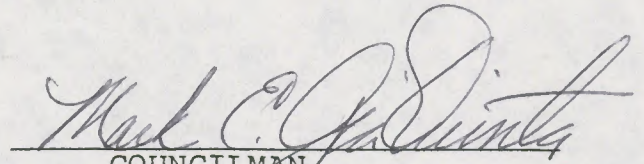
**Section 16. Actions Approved and Confirmed.** All acts and doings of the officers of the City which are in conformity with the purposes and intents of this Bond Ordinance and in the furtherance of the issuance of the Bonds and the execution, delivery and performance of the Indenture and the Agreement shall be, and the same hereby are, in all respects approved and confirmed.

**Section 17. Severability of Invalid Provisions.** If any one or more of the agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining agreements and provisions and shall in no way effect the validity of any of the other agreements and provisions hereof or of the Bonds authorized hereunder.

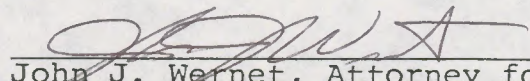
**Section 18. Repealing Clause.** All ordinances or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.



Section 19. Effective Date. This Bond Ordinance shall take effect immediately upon its adoption.

  
COUNCILMAN

APPROVED AS TO FORM AND  
LEGALITY.

  
John J. Wernet, Attorney for the  
Economic Development Commission

Dated this 21<sup>st</sup> day of Nov, 1983



Read the first time in full and on motion by GiaQuinta, seconded by Attn, and duly adopted, read the second time by title and referred to the Committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 11-22-83

Sandra E. Kennedy  
CITY CLERK

Read the third time in full and on motion by GiaQuinta, seconded by Solano, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GiaQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 12-6-83

Sandra E. Kennedy  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (~~SPECIAL~~)

(~~APPROPRIATION~~) ORDINANCE (RESOLUTION) NO. 1-233-83

on the 6th day of December, 1983.

ATTEST:

(SEAL)

Sandra E. Kennedy

Ray A. Ebert

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 7th day of December, 1983, at the hour of 10:00 o'clock A. M., E.S.T.

Sandra E. Kennedy

CITY CLERK

Approved and signed by me this 7th day of December, 1983, at the hour of 10:30 o'clock A. M., E.S.T.

Win Moses, Jr.  
WIN MOSES, JR. - MAYOR



BILL NO. S-83-11-02

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN  
ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF FORT WAYNE, INDIANA  
ECONOMIC DEVELOPMENT REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT  
OF \$9,000,000 FOR THE PURPOSE OF FINANCING THE COST OF THE ACQUISITION,  
CONSTRUCTION AND INSTALLATION OF CERTAIN ECONOMIC DEVELOPMENT FACILITIES  
FOR THE BENEFIT OF AVERY INTERNATIONAL CORPORATION

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

MARK E. GIAQUINTA, CHAIRMAN

JAMES S. STIER, VICE CHAIRMAN

JANET G. BRADBURY

SAMUEL J. TALARICO

DONALD J. SCHMIDT

Just  
Janet G. Bradbury  
Samuel J. Talarico  
DS

*CM correct  
12-6-83*

*S. Kennedy*